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2 **CLAIM AMENDMENTS**

3 Claims 7-9, 19-24, 27-29, and 55 were pending at the time of the Action.

4 Claims 7 and 19 are amended in this Response.

5 Claims 57-63 are new.

6 Accordingly, claims 7-9, 19-24, 27-29, 55 and 57-63 are now pending.

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8 The listing of claims below will replace prior versions of claims in the
9 application:

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11 Claims 1-6 are CANCELED

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13 7. **(CURRENTLY AMENDED)** A method for measuring bandwidth
14 between two entities on a communications network, the method comprising:

15 via a communications network, receiving at least a pair of non-
16 compressible packets having measurable characteristics;

17 calculating bandwidth based upon, measurable characteristics of at least the
18 pair of non-compressible packets; and

19 determining if the calculated bandwidth is outside a given range of
20 believability for calculated bandwidth;,

21 if the calculated bandwidth is determined to be outside the given range of
22 believability, then:

23 disregarding the calculated bandwidth; and

24 querying a modem of an entity about a bandwidth setting of the

25 modem.

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2 **8. (PREVIOUSLY AMENDED)** A method as recited in claim 7, wherein
3 the queried modem is a modem of a receiving entity.

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5 **9. (PREVIOUSLY AMENDED)** A method as recited in claim 7, wherein
6 the queried modem is a modem of a sending entity.

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8 Claims 10-18 are CANCELED.

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10 **19. (CURRENTLY AMENDED)** A method for measuring bandwidth
11 between two entities on a dynamic network, the method comprising:

12 via a dynamic network, sending at least a pair of non-compressible packets,
13 the dynamic network being a communications network having no assurance that
14 both packets of a pair of identical packets are handled in an identical manner while
15 in transit on the communications network;

16 receiving a bandwidth calculation value determined based upon
17 measurements related to at least the pair of non-compressible packets, and
18 consideration of a given range of believability related to calculated bandwidth;

19 selecting a file formatted for a given bandwidth that is equal to or less than
20 the bandwidth calculation; value; and

21 sending the selected file via the dynamic network.

1 **20. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
2 wherein each of the pair of non-compressible packets is approximately
3 fragmentation-avoidance size.

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5 **21. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
6 wherein each of the pair of non-compressible packets is highly entropic.

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8 **22. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
9 wherein each of the pair of non-compressible packets is formatted for TCP.

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11 **23. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
12 wherein each of the pair of non-compressible packets is formatted for UDP.

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14 **24. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
15 wherein the packets of the pair are equivalent in size.

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17 **25. (CANCELED)**

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19 **26. (CANCELED)**

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21 **27. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
22 before the sending, further comprising selecting one of the pair of non-
23 compressible packets from a set of differing non-compressible packets.

1 **28. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
2 before the sending, further comprising generating the pair of non-compressible
3 packets.

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5 **29. (ORIGINAL)** A computer-readable medium having computer-
6 executable instructions that, when executed by a computer, performs the method
7 as recited in claim 19.

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9 Claims 30-54 are CANCELED.

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11 **55. (PREVIOUSLY PRESENTED)** A method as recited in claim 19,
12 wherein the dynamic network is the Internet.

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14 **56. (CANCELED)**

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16 **57. (NEW)** A method as recited in claim 19, wherein the
17 bandwidth value received is within the given range of believability related to
18 calculated bandwidth.

19
20 **58. (NEW)** A method, comprising:
21 via a communications network, receiving at least a pair of non-
22 compressible packets having measurable characteristics;
23 calculating bandwidth based upon, measurable characteristics of at least the
24 pair of non-compressible packets; and

1 determining if the calculated bandwidth is outside a given range of
2 believability for calculated bandwidth,

3 if the calculated bandwidth is determined to be outside the given range of
4 believability:

5 setting a bandwidth to a low-believability threshold if the calculated
6 bandwidth is below the given range of believability for calculated
7 bandwidth; and

8 setting a bandwidth to a high-believability threshold if the calculated
9 bandwidth is above the given range of believability for calculated
10 bandwidth.

11
12 **59. (NEW)** A method as recited in claim 58, wherein each of the
13 pair of non-compressible packets is highly entropic.

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15 **60. (NEW)** A method as recited in claim 58, wherein each of the
16 pair of non-compressible packets is formatted for TCP.

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18 **61. (NEW)** A method as recited in claim 58, wherein each of the
19 pair of non-compressible packets is formatted for UDP.

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21 **62. (NEW)** A method as recited in claim 58, wherein the packets
22 of the pair are equivalent in size.

1 63. (NEW) A method as recited in claim 58, wherein the given
2 range of believability for calculated bandwidth is 24.4 Kbps – 1 Mbps, the low-
3 believability threshold is 24.4 Kbps and the high-believability threshold is 1 Mbps.

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